

**TITLE 8:
ADMINISTRATIVE REGULATIONS
Chapter 3.5, Subchapter 1, Article 2;
Sections 406, 411.1 - 411.4, 415, 417.3 and 417.5**

Variances from Occupational Safety and Health Standards

Heard at the April 18, 2002, Public Hearing
Adopted on May 16, 2002
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**STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

PROPOSED STATE STANDARD,
TITLE 8, CHAPTER 3.5, SUBCHAPTER 1, ARTICLE 2

Amend Section 406(a) to read:

§ 406. Party Status.

(a) Affected employees and/or an authorized employee representative may elect to participate as parties at any time before the commencement of the hearing, unless, for good cause shown, the Standards Board allows such election at a later time. ~~See also rule 406.1.~~

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NOTE: Authority cited: Section 143.2, Labor Code. Reference: Sections 143.1, 143.2 and 147, Labor Code.

Amend Section 411.1 to read:

§ 411.1. Denial of Defective Application for ~~Interim and/or~~ Permanent Variance.

An application for ~~an interim and/or~~ permanent variance ~~which that~~ fails to comply with Rule 411 shall not be docketed or considered by the Board. ~~Applicants~~ Employers shall be advised of the application's defective areas and requested to correct or resubmit the application in accordance with the Board ~~Rules in Section 411~~. Failure of ~~the applicant~~ to correct or resubmit their application in accordance with the Board ~~Rules~~ within 60 days shall ~~constitute~~ result in automatic denial of the application. A denial of the application pursuant to this ~~Rule~~ shall be without prejudice to the filing of another application.

NOTE: Authority cited: Section 143.2, Labor Code. Reference: Section 143.2, Labor Code.

Repeal Section 411.2:

§ 411.2. Interim Variances.

~~(a) An application may also be made for an interim variance to be effective until a decision is rendered on the application for a permanent variance filed previously or concurrently. An application for an interim variance may include statements of fact and argument as to why the interim variance should be granted in addition to the requirements of Board Rule 411. The Standards Board may rule ex parte upon the application.~~

NOTE: Authority cited: Section 143.2, Labor Code. Reference: Section 143.2, Labor Code.

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PROPOSED STATE STANDARD,
TITLE 8, CHAPTER 3.5, SUBCHAPTER 1, ARTICLE 2

Repeal Section 411.3:

§ 411.3. Notice of the Granting of an Interim Variance.

~~When an interim variance is granted, a copy of the order shall be served upon the applicant for the order and other parties, and the terms of the order shall be published as provided in these rules. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a permanent variance.~~

NOTE: Authority cited: Section 143.2, Labor Code. Reference: Section 143.2, Labor Code.

Repeal Section 411.4:

§ 411.4. Notice of Denial of Interim Variance.

~~If an application for an interim variance is denied the applicant shall be given notice of the denial within a reasonable time, which shall include, or be accompanied by, a brief statement of the grounds therefor.~~

NOTE: Authority cited: Section 143.2, Labor Code. Reference: Section 143.2, Labor Code.

Amend Section 415 to read:

§ 415. Referral of Variance Applications and Temporary Variance Appeals to the Division.

(a) Applications for variances and appeals from temporary variances relating to occupational safety and health standards filed with the ~~b~~Board in proper form will be promptly referred to the Division for evaluation.

(b) ~~To the extent practicable, h~~Hearings on applications for variances and appeals will be scheduled so that the ~~evaluation by Division's evaluation report~~ will be available for presentation at the hearing. ~~If it is necessary to conduct a hearing prior to the submission of any final report on the application or appeal, the Standards Board may call upon the Division to present an interim report or comments at the hearing.~~

NOTE: Authority cited: Section 143.2, Labor Code. Reference: Section 147, Labor Code.

Amend Section 417.3(a) to read:

§ 417.3. Withdrawal of Variance Applications and Temporary Variance Appeals.

(a) A variance application or appeal may only be withdrawn by written request ~~any time and~~ before a final decision is issued ~~or by oral request at the time of hearing by the Board~~. If such request is made, the ~~b~~Board shall issue a decision dismissing the appeal or application.

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Note: Authority cited: Section 143.2, Labor Code. Reference: Sections 143.2 and 6457, Labor Code.

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PROPOSED STATE STANDARD,
TITLE 8, CHAPTER 3.5, SUBCHAPTER 1, ARTICLE 2

Add Section 417.5 to read:

§ 417.5. Dismissal of Variance Applications.

If an Employer fails to pursue its variance application after the application is docketed, or causes significant delay in the processing of its application, the Board will provide the Employer with written notice of the Board's intent to dismiss the application. Unless the Employer responds to the notice within 30 days from the date of service, and subsequently assists in the processing of the variance application, the Board may dismiss the application without prejudice.

NOTE: Authority cited: Section 143.2, Labor Code. Reference: Sections 143 and 143.2, Labor Code.